**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.1348 OF 2007

Suresh Poojari, Proprietor
of M/s.Ravi Refreshment .. Petitioner.
Vs.
State of Maharashtra & Ors. .. Respondents.

Mr.S.V.Sadavarte for the petitioner.
Mr.K.R.Belosey G.P. for the respondents.

**CORAM : D.B.BHOSALE, J.**
**DATED : 10TH JULY, 2007.**

**P.C.:**

. Heard learned counsel for the parties.

2. By this petition, the petitioner has impugned an order dated 14.6.2007 passed by respondent no.3 by which the petitioner's appeal filed under section 33 of the Bombay Police Act, 1951 (for short "the said Act") has been rejected. In the appeal the petitioner had challenged an order dated 17.10.2006 passed by the Deputy Commissioner of Police, whereby the licence to keep a place of public entertainment issued to the petitioner had been cancelled. The subject licence was issued to the petitioner under Rule 5 of the Rules for Keeping Places of Public Entertainment in Greater Bombay, 1953 (for short "the said Rules").

3. Mr.Sadavarte, learned counsel for the petitioner submitted that no order cancelling such

licence could be passed, unless and until a conviction had been recorded. He further submitted that an offence registered against the petitioner bearing C.R.No.410/2005 under sections 292, 294 r/w 34 of the I.P.C. r/w 33(A)(2) of the Bombay Police Act is still pending and hence the impugned order is premature. In support of this contention he placed reliance upon the judgment of this court in writ petition no.7271/1999 (Dilip J.Bhatia Vs. The Commissioner of Police, Thane) dated 20th July, 2000. He then submitted that even the other grounds mentioned in the impugned order for cancellation of the licence also cannot be sustained since they are based on the aforesaid pending case registered against the petitioner and on an isolated incident dated 24.8.2005. He further submitted that looking at the nature of the alleged breach committed by the petitioner, the Commissioner's order of cancellation of licence is harsh. On the other hand the learned Government Pleader, at the outset, invited my attention to the provisions of the said Act and the said Rules, and submitted that the action of cancellation of the licence is not based only on the pending criminal case against the petitioner but it is also based on the violation of the provisions of section 33(A)(1)(a) of the Act and rule 21(A) and 8(2) of the Rules and hence the action is justified. He submitted, the action of cancellation of the

licence is an independent action and that has nothing to do with the criminal case pending against the petitioner.

4. I perused the impugned order and the show cause notice issued by the concerned authorities. Section 33(A)(1)(a) provides that notwithstanding anything contained in the Act or the said Rules made by the Commissioner of Police under sub-section (1) of section 33 for the area under charge, on and from the date of commencement of the Bombay Police (Amendment) Act, 2005 holding a dance performance of any sorts in an eating house, permit room or beer bar is prohibited. Similarly, Rule 21-A of the said Rules contemplates that no person keeping a place of public entertainment shall permit during any performance of exhibition of any programme of entertainment at such place, any indecency of dress, dance or gesture. Rule 8(2) of the Rules provides that no person keeping a place of Public Entertainment shall at any time permit an agent to act for him in the management of such place without the like permission similarly endorsed. The impugned orders clearly demonstrate that the petitioner has violated all these provisions, prompting the Commissioner of Police to take the impugned action. It is clear that the action of cancellation of licence is based not only on the pending criminal

case against the petitioner but it is on three other grounds. All the four grounds as reflected in the order read thus:

> "(i) In the year 2005 a police case has been registered under Section 292, 294, 34 of I.P.C. r/w. 33(A)(2) of the Bombay Police Act.
>
> (ii) The appellant has carried on the performance of dance in his restaurant when there is ban on dance of any kind in eating house, permit room and beer bar.
>
> (iii) The appellant has not registered the name of the Manager and without taking prior permission from the licensing authority allowed him to conduct the business and has not submitted the three copies of the specimen signature or thumb impression, and therefore committed breach of Rule 8(2).
>
> (iv) The appellant has knowingly permitted the dancers to perform indecent dance and thereby committed breach of Rule 21(A)".

5. Respondent no.3 has considered all the four grounds and not only ground no.1 in respect of which the judgment of this court in **Dilip Bhatia's** case is relied upon by Mr.Sadavarte, learned counsel for the petitioner. Upon perusal of the impugned orders and more particularly paragraphs 7, 8 and 9 in the order of the Home Minister, they show that the petitioner had violated the mandatory provisions of the said Act and the said Rule. The prosecution lodged against the petitioner is for the offences committed by him under section 292, 294, 34 of I.P.C. read with section 33(A)(2) of the said Act. While action of cancellation of the licence is under section

33(A)(1)(a) r/w Rule 27 of the Rules. Rule 27 empowers the Commissioner of Police to cancel a licence on the grounds envisaged in that provision. The prosecution and the action of cancellation of licence, in the present case are independent of each other. It is thus clear that cancellation of licence does rests only on the criminal case pending against the petitioner. Looking at the powers conferred on the authority and the background against which the power has been executed I see no reason to interfere with the impugned order. Merely because the impugned action is based on only one incident of 24.8.2005, that by itself cannot be a ground for setting aside the impugned order. Rule 27 clearly confers power on the commissioner to take such action in the event of violation of the mandatory provisions, such as section 33(A)(1)(a) of the Act. Looking at the nature of the allegations made against the petitioner and violation of the provisions of the said Act and the said Rules, the impugned order cannot be faulted and it warrants no interference by this court in its extraordinary jurisdiction under Article 226 of the Constitution of India. Keeping that in view and considering the findings of fact recorded by the authorities below and as I find sufficient material on record to sustain those findings, the writ petition fails and is dismissed as such. Liberty to the petitioner to apply for fresh licence after

disposal of Special Leave Appeal (Civil) No.7993 of 2006 pending in the Supreme Court.

**(D.B.BHOSALE, J.)**